

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

RECEIVED

JENNIE COURTNEY,  
AS ADMINISTRATIX OF THE  
ESTATE OF DENNIS COURTNEY,  
DECEASED,

Plaintiff,

v.

ANTHONY CLARK, et al.,

Defendants.

2006 JUL -5 P 4: 34

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

CIVIL ACTION NO.: 2:06CV 600

NOTICE OF REMOVAL

To the Judges of the United States District Court for the Middle District of Alabama:

COME NOW Defendants Covington County Sheriff Anthony Clark, Covington County Deputy Sheriff Jerry Edgar, and Covington County Deputy Sheriff Walter Inabinett, who are Defendants in the above-styled action, and submit this Notice of Removal from the Circuit Court of Covington County, Alabama, to the United States District Court for the Middle District of Alabama, Northern Division. Each of these Defendants is represented by the undersigned counsel and respectfully states as follows:

1. On June 2, 2006, an action was commenced against Sheriff Anthony Clark, Jerry Wayne Edgar, Walter Inabinett, Black Creek Integrated Systems, Oscar Roy Doster, James Darren Harnage, Hollis and Span, Inc., Seymour and Lisenby, Inc., Darden Engineers, Inc., Dickey and Associates, Inc., and fictitious defendants 1-200 by the filing of a Complaint in the Circuit Court of Covington County, Alabama, entitled "Jennie Courtney v. Sheriff Anthony Clark, et al.," Civil Action No. CV 06-110. (See Plaintiff's Complaint, attached hereto as "Exhibit A") The Summons and Complaint were served on Sheriff Clark on or about June 6,

2006, Deputy Edgar was served on June 9, 2006, and Deputy Inabinett was served on June 10, 2006. In the Complaint, the Plaintiff alleges various state law negligence and wantonness claims. (Complaint at pp. 6-20.) The Plaintiff also avers that she is bringing this action “pursuant to 42 U.S.C. § 1983, et seq.” (Complaint at ¶ 14.) The Plaintiff alleges that her deceased’s Fifth and Fourteenth Amendment rights were violated. Id.

2. Unanimity of defendants in requesting removal is not required where *inter alia* “the removed claim is separate and independent under 28 U.S.C. § 1441(c)”. Retirement Systems of Alabama v. Merrill Lynch & Co., 209 F.Supp. 2d 1257, 1262 n.8 (M.D. Ala. 2002). A separate and independent claim is one “within the jurisdiction conferred by section 1331.” 28 U.S.C. § 1441(c). Section 1983 claims fall within the federal question jurisdiction of the Court as they are “civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Sheriff Clark, Deputy Edgar, and Deputy Inabinett are the only governmental official defendants who could face the Plaintiff’s separate and independent § 1983 claim. Their consent, therefore, is all that is required.

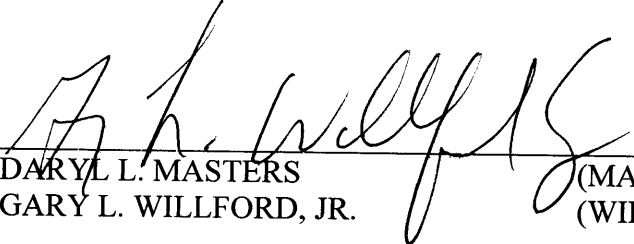
3. Defendants desire to exercise their rights under the provisions of Title 28 U.S.C. § 1441(c) to remove this action from the Circuit Court of Covington County, Alabama, in which said action is now pending under the above-styled title.

4. This is a civil action of which the District Courts of the United States have been given original jurisdiction under 28 U.S.C. § 1331 and principles of supplemental jurisdiction under 28 U.S.C. § 1367 affords the right to remove the entire case to this Court.

WHEREFORE, PREMISES CONSIDERED, Defendants Covington County Sheriff Anthony Clark, Covington County Deputy Sheriff Jerry Edgar, and Covington County Deputy Sheriff Walter Inabinett, respectfully file this Notice of Removal pursuant to 28 U.S.C. § 1446,

removing this action from the Circuit Court of Covington County, Alabama, to the United States District Court for the Middle District of Alabama, Northern Division.

Respectfully submitted on this 5th day of July, 2006.

  
DARYL L. MASTERS (MAS018)  
GARY L. WILLFORD, JR. (WIL198)

ATTORNEYS FOR DEFENDANTS COVINGTON  
COUNTY SHERIFF ANTHONY CLARK, COVINGTON  
COUNTY DEPUTY SHERIFF JERRY EDGAR, AND  
COVINGTON COUNTY DEPUTY SHERIFF WALTER  
INABINETT

OF COUNSEL:

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing Notice of Removal by placing a copy of the same in the United States Mail, postage prepaid, upon:

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Britt V. Bethea, Esq.  
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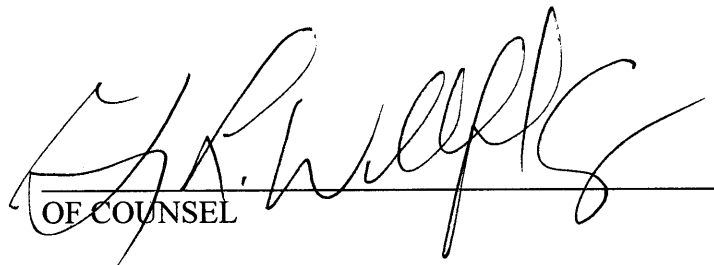
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Honorable Roger A. Powell  
Covington County Circuit Clerk  
Covington County Courthouse  
Andalusia, AL 36420

this 5th day of July, 2006.

  
OF COUNSEL